

## Internal Revenue Service

Number: **201025044**

Release Date: 6/25/2010

Index Number: 1502.75-00, 9100.20-00

In Re:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-151815-09

Date:

February 26, 2010

### LEGEND

Parent =

Former Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Year 1 =

Company  
Official =

Tax Professional =

Dear :

This letter responds to a letter dated November 20, 2009, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent, Former Parent, Sub 1, and Sub 2 to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations, effective for the taxable year ended Date A (the "Election"). The material information is summarized below.

Prior to Date B, Former Parent was the common parent of an affiliated group (the "Former Parent Group") consisting of itself, Sub 1, and Sub 2, which filed consolidated Federal income tax returns. On Date B, Parent acquired all of the stock of Former Parent in a transaction not constituting a reverse acquisition within the meaning of § 1.1502-75(d)(3), and, because Parent is an includible corporation, terminating the Former Parent Group. Nevertheless, the Former Parent Group filed a consolidated Federal income tax return for Year 1. Parent filed a separate return for its Year 1.

The Election was due no later than the last day prescribed by law (including extensions of time) for the filing of Parent's return, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's, Former Parent's, Sub 1's, or Sub 2's taxable years for which they want to make the Election, the taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than

six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, provided Parent group qualifies substantively to file a consolidated return for the applicable tax year, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election. Parent, having already filed its return, must, within 45 days from the date on this letter, amend its return to reflect a consolidated return that includes Parent's activity for Year 1 and the activity of the Former Parent Group members for Year 1 after Date B (including Forms 1122 and 851). Parent must attach a copy of this letter to such return, or if Parent group files its return electronically, Parent group may attach a statement to the return that provides the date and control number of this ruling letter.

The above extension of time is conditioned on Parent group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon

audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether Parent group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax consequences of filing the return or the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the return and the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)